REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WESTERN INTERNATIONAL HOTELS
COMPANY - Philippine Branch,
Petitioner,

- versus - C.T.A. CASE NO. 3081

THE ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

3/17/92

D E C I S I O N

This is a claim for refund or tax credit of petitioner in the total amount of P150,666.41 representing overpaid branch profit remittance taxes.

Petitioner is a foreign corporation duly licensed to engage in business in the Philippines.

In the years 1978 and 1979, petitioner made various payments of branch profits remittance tax on remittance of profits realized totalling P1,153,307.49 for the years 1977, 1978 and 1979.

In a ruling dated January 21, 1980, respondent Commissioner held that "the 15% branch profit remittance tax shall be imposed on the profit actually remitted and not on the total branch profit out of which the remittance is to be made."

Based on this correct computation of the branch profit remittance tax, petitioner should have only paid the total amount of P1,002,641.08, instead of the amount of P1,153,307.49 actually paid, resulting in an overpayment in the total amount of P150,666.41.

On April 1, 1980, petitioner filed with respondent a claim for refund or tax credit in the total amount of P150,666.41, representing its overpaid branch profit remittance tax liability.

The only issue in this case is whether or not petitioner is entitled to the refund or tax credit in the amount of P150,666.41.

We hold in the affirmative and we hold that this case is similar to the case of **Exxon Chemical Eastern, Inc., vs. The Acting Commissioner of Internal Revenue**, CTA Case No. 3137, September 30, 1986, wherein we held that "the 15% branch profit remittance tax shall be imposed on the profit actually remitted and not in the total branch profit out of which the remittance is to be made."

> On January 21, 1980 the Acting Commissioner of Internal Revenue issued a ruling where he held as follows:
>
> > "xxx relative to your query as to the tax base upon which the 15% branch profit remittance tax provided for

> under Section 24(b)(2) of the Tax Code shall be imposed, please be advised that the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the total branch profit out of which the remittance is made."

Section 24(b)(2) of the Tax Code insofar as pertinent provides.

> "xxx Provided further, That any profit remitted abroad by a branch office to its mother company shall be subject to tax of fifteen per cent (15%) (except those registered with the Export Processing Zone Authority) xxx."

Hewed close to the context of Section 24(b)(2) *supra* as construed by the aforesaid Ruling of January 21, 1980, petitioner claims that it should have paid the branch profit tax of only P212,726.09 instead of P244,635.00 and P314,243.61 instead of P361,380.15 of its actual profit remittances for the years 1977 and 1978, respectively. As a consequence it overpaid the branch profit remittance taxes in the total amount of P79,045.45, computed as follows:

Date Paid	Net Profit After Income Tax	Branch Remittance Tax (BRT)	Correct BRT	Overpayment
1977 Profit				
Tax computed and paid	15% of P1,630,900.00	P244,635.00		
Should be	15% of P1,418,174.91*		P212,726.09	P31,908.91

1978 Profit

Tax computed and paid	15% of P2,409,201.00	P361,380.15	
Should be	15% of P2,049,457.39*	P314,243.61	P47,136.54
	Amount claimed for refund or credit		P79,045.45

*(Remitted amount)

On August 26, 1980 petitioner filed with the respondent's Office a claim for the refund or tax credit of the amount of P79,045.45 representing its alleged overpaid branch profit tax liabilities.

On September 2, 1980 in order to toll the two-year statutory period of limitation had this petition filed with this court.

Respondent takes no issue as to the clear and unambiguous language of the ruling of January 21, 1980, supra, that the 15% branch profit remittance tax shall be imposed on the profit actually remitted abroad and not on the branch profit out of which the remittance is to be made. Rather, he invokes the right to rectify any error committed in the implementation of the tax laws and regulations on the ground that the government is not bound by the mistakes of its agents (Pineda v. CFI Tayabas, 52 Phil. 803), and accordingly cites Revenue Memorandum Circular No. 8-82 dated March 17, 1982, providing, inter alia, "Considering that the 15% branch profit remittance tax is imposed and collected at source, necessarily the tax base should be the amount actually applied for by the branch with the Central Bank of the Philippines as profit to be remitted."

Suffice it to state that the argument agitated by the respondent was squarely met and rejected in a case similar in many or so in tenor and circumstances. It may be necessary to repeat what the Supreme Court said and what so plainly apply to the petitioner in the case at bar, that -

> "Petitioner's aforesaid contention is without merit. What is applicable in the case at bar is still the Revenue Ruling of January 21, 1980 because private respondent Burroughs Limited paid the branch profit remittance tax in question on March 14, 1979. Memorandum Circular No. 8-82 dated March 17, 1982 cannot be given retroactive effect in the light of Section 327 (Non-retroactivity of rulings) of the National Internal Revenue Code xxx. (Underscoring supplied)
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> "The prejudice that would result to private respondent Burroughs Limited by a retroactive application of Memorandum Circular No. 8-82 is beyond question for it would be deprived of the substantial amount of P172,058.90. And, insofar as the enumerated exceptions are concerned, admittedly, Burroughs Limited does not fall under any of them." (Commissioner of Internal Revenue v. Burroughs Limited and CTA, G.R. No. L-66653, June 23, 1986)

Going by the said pronouncement, there can be no occasion to speculate upon where to base the 15% branch profit remittance impositon before March 17, 1982 or the issuance of the questioned Revenue Circular. Otherwise, there would be a random quirk in the equal tax treatment of cases similarly circumstanced. We therefore hesitate to futher fashion an issue into a satisfactorily settled legal situation.

Accordingly, we view with ease petitioner's righteous indignation in prying loose from the legal constraint of retrospective application of the subject Circular, having stretched too far the effective range of expediency. Petitioner has proved entitlement to a favorable determination as a matter of fact and law.

WHEREFORE, finding the petition to be well taken, the same is granted and the refund/credit of the amount sought is hereby ordered. No pronouncement as to costs.

This decision in the case of **Exxon Chemical Eastern, Inc. case** finds strength in the decision in the case of **Marubeni Corporation vs. Commissioner of Internal Revenue**, 177 SCRA 500 and also the case of **Commissioner of Internal Revenue vs. Burroughs Limited**, 142 SCRA 324.

WHEREFORE, finding the petition to be well taken, the same is granted and the refund/credit in the amount of P150,666.41 sought is hereby ordered.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 17, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals